United States Department of Labor
Employees' Compensation Appeals Board

R.E., Appellant	)	
and	)	**Docket No. 14-868**
	)	**Issued: September 24, 2014**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Victorville, CA, Employer	)	

Appearances:
Lonnie Boylan, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 7, 2014 appellant, through her representative, filed a timely appeal from the January 27, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied expansion of the accepted medical conditions. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the conditions for which appellant seeks compensation are causally related to the September 1, 2011 work injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 1, 2011 appellant, a 50-year-old psychologist, sustained a traumatic injury in the performance of duty when she bent over from her chair to check a telephone wire connection under her desk, lost her balance and fell.

Dr. Rami T. Pathi, a Board-certified orthopedic surgeon, examined appellant on September 15, 2011. He noted appellant's complaints, listed the history of injury, and described his findings on examination. Dr. Pathi diagnosed a meniscus tear of the right knee and lumbar and cervical sprain. Based on appellant's statements and his clinical examination, Dr. Pathi found that appellant's current injury to the right knee was the direct result of the work incident that occurred on September 1, 2011.[2]

On December 7, 2011 OWCP accepted appellant's claim for right knee sprain and strain with a lumbar sprain and strain.

A magnetic resonance imaging (MRI) scan of the cervical spine obtained on January 4, 2012 showed numerous findings from C3-7, including bilateral uncovertebral hypertrophy, disc/osteophyte complexes, facet arthropathy, neural foraminal narrowing, and a left paracentral disc herniation at C4-5 with mild spinal canal stenosis on the left. The study found no stress injury or compression deformity.

On April 4, 2012 Dr. Pathi updated his diagnosis to include cervical herniations with radiculopathy. He also updated his statement of causation or work relatedness. Based on the description given by appellant and the physical examination, Dr. Pathi determined that appellant's injury to the neck was the direct result of the work incident that occurred on September 1, 2011. On June 18, 2012 he updated his diagnosis to include depression secondary to pain. On April 3, 2013 Dr. Pathi updated his diagnosis to include lumbago and cervicalgia.

X-rays of the cervical spine, obtained on August 24, 2012, showed marked spondylosis involving C5-6 and C6-7 with marked narrowing of C5-6 and C6-7 right-sided neural foramina. The severity of this neural foraminal narrowing was noted to have mildly worsened since September 2, 2004. The study also showed prominent facet joint degenerative arthritis involving the left C3-4 facet. There was no acute cervical spine injury. There was upper thoracic scoliosis and lower cervical kyphosis.

An MRI scan of the right knee was obtained on September 27, 2012. It showed a probable small free edge tear of the junction of the posterior horn and body of the medial meniscus; a ganglion cyst measuring 2.8 centimeters posterior to the superior aspect of the interosseous membrane; small joint effusion; and medial greater than lateral patellofemoral degenerative changes represented by chondral loss and marginal osteophyte formation.

On November 20, 2012 Dr. Ross N. Brudenell, a Board-certified orthopedic surgeon, noted that appellant was injured at work as a prison guard in September 2011. He described his

[2] Dr. Pathi inadvertently noted February 2, 2011 as the date of injury as he had earlier included in his report that his examination followed the occurrence of the September 1, 2011 employment injury.

findings on examination and reviewed MRI scan studies of appellant's cervical spine. Dr. Brudenell diagnosed cervical radiculopathy, slowly resolving, and cervical spondylosis, "the latter of which certainly predates her injury but certainly her cervical radiculopathy seems to be directly related to her injury."

An MRI scan of the lumbar spine, obtained on April 26, 2013, showed multilevel degenerative changes, most prominent at the L5-S1 level.

On April 11, 2013 OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Douglas Bald, a Board-certified orthopedic surgeon, for a second opinion on the extent of her September 1, 2011 employment injury. In a May 15, 2013 report, Dr. Bald related appellant's history of injury. He noted that she was aware of the acute onset of pain primarily in the right side of her neck and upper back.[3] Dr. Bald reviewed appellant's medical record, including the results of diagnostic studies. He described her complaints and symptoms, as well as his findings on physical examination and offered his diagnoses.

It was Dr. Bald's opinion that the injuries appellant incurred on September 1, 2011 were consistent with the accepted conditions of right knee sprain, lumbar sprain and neck sprain.[4] It was his opinion that the lumbar sprain and right knee sprain had resolved completely without residuals and were not contributing to any persistent symptomatology or physical limitation. Dr. Bald observed that appellant's current major subjective complaints were felt to be directly related to her cervical spine condition. In his opinion, the evidence supported that the neck sprain associated with the September 1, 2011 work injury, combined with her preexisting severe multilevel degenerative disc disease, and at least historically and objectively was aggravated by the work incident and was unlikely to resolve with any medical treatment. Dr. Bald added that the result of the September 1, 2011 work injury was a persistent chronic pain syndrome and persistent right upper extremity radiculopathy/radiculitis.

Appellant's representative asked OWCP to expand its acceptance to include several medical conditions.[5] In turn, OWCP asked Dr. Bald for a supplemental report addressing whether any of these conditions were related to the September 1, 2011 work injury, and if so,

[3] The earliest medical evidence shows that appellant reported immediate pain in the right side of her mid-back and in her right knee. The T10-12 area was painful to palpation and had palpable spasm. Though appellant reported that she began to feel stiffness in her upper back and neck by the evening, there were no clinical findings and no diagnosis with respect to either. Clinical studies were promptly obtained for her thoracic spine and right knee. The first clinical study of the cervical spine was an MRI scan obtained on January 4, 2012. It was not until April 4, 2012 that Dr. Pathi first reported a connection between appellant's neck condition and the September 1, 2011 work injury.

[4] Notwithstanding the April 8, 2013 statement of accepted facts, OWCP did not formally accept appellant's claim for neck sprain.

[5] Aggravation of the preexisting cervical degenerative disc disease at multiple levels; cervical spondylosis at C5-6 and C6-7; cervical stenosis and narrowing of the right-sided neural foramina at C5-6 and C6-7; cervical radiculopathy; cervical disc herniation; facet joint degeneration arthritis involving the left C3-4 facet; lumbar disc disorder, cervicalgia; lumbago; posterior horn and body tears of the medial meniscus; degenerative changes to the right knee represented by chondral loss and marginal osteophyte formation along the lateral patellofemoral joint; acute scapular thoracic strain; and right C5-6 paresthesias.

how. It also asked Dr. Bald to provide a rationalized opinion that differentiated appellant's preexisting cervical degenerative disease from the effects of the accepted work injury.

In a June 21, 2013 addendum, Dr. Bald advised that there was a large list of preexisting medical conditions, many of which were unrelated to the September 1, 2011 work injury. It was reasonable, he found, to expand the conditions associated with the injury claim to include a permanent aggravation of appellant's preexisting cervical spondylosis with right C5-6 paresthesias. The other conditions claimed, were not related in any way to the September 1, 2011 work injury. These conditions included cervical stenosis at C5-6 and C6-7, cervical radiculopathy, cervical disc herniation, facet joint degenerative arthritis involving the left C3-4 facet, lumbar disc disorder, posterior horn and body of the meniscus tears, degenerative changes of the right knee represented by chondral loss and marginal osteophyte formation along the lateral patellofemoral joint and acute scapulothoracic strain. None were caused or affected by the incident in question.

As for differentiating the preexisting cervical degenerative disc disease from the effects of the September 1, 2011 work injury, Dr. Bald noted that appellant was functioning reasonably well leading up to the incident. Since then appellant had experienced increasing subjective symptomatology and recurrent evidence of radiculitis, at least in the right upper extremity, that was persistent since the work injury.

On April 3, 2013 Dr. Pathi noted that, although appellant had a preexisting condition of the cervical and lumbar spine, she was asymptomatic prior to the September 1, 2011 work injury. She had no prior injury to her right knee. After describing appellant's current complaints, Dr. Pathi listed the following medical conditions as causally related to the September 1, 2011 work injury: aggravation of the preexisting cervical degenerative disc disease at multiple levels; cervical radiculopathy; cervical disc herniation; lumbar disc disorder; posterior horn and body tears of the medial meniscus; acute scapular thoracic strain; right C5-6 paresthesias.

Dr. Pathi stated that appellant had prior cervical disc herniations that were exacerbated or worsened by the September 1, 2011 work injury. Given her prior condition and the nature of her fall and twist injury, it was reasonable to conclude that the incident caused a permanent aggravation of appellant's cervical and lumbar spine. Objective findings included rigidity, spasm, tenderness and limited motions of the spine throughout. Appellant had a positive straight leg raising test bilaterally and a positive pump handle test. She had no prior injury to her right knee and was asymptomatic prior to the work injury. Appellant fell on her right knee and was symptomatic ever since. She had preexisting degenerative changes to her right knee, and the tears to the medial meniscus, revealed by MRI scan, were causally related to the fall. Objective findings included tenderness, mild swelling, weakness and limited motion. McMurray's and Apley's tests were positive.

On August 21, 2013 OWCP accepted appellant's claim to include a torn right medial meniscus.

On June 6, 2013 Dr. Sarah Buenviaje-Smith, a consulting Board-certified pain specialist, advised that, although she did not have copies of any previous MRI scans of the lumbar spine to

determine if there was any progression of the pathology, she believed that the mechanism of the fall injury may have aggravated appellant's preexisting condition.

On November 26, 2013 Dr. Pathi reviewed Dr. Bald's report and disagreed with his opinion that the September 1, 2011 work injury did not aggravate appellant's preexisting diseases. He described the work injury and found that the twisting of her spine and neck, combined with the sustained high-impact traumatic fall, exacerbated appellant's cervical and lumbar disc disorders. To provide the rationale for this aggravation, Dr. Pathi noted that the discs act as load-bearing cushions and help to distribute compressive forces to the spine. Any traumatic fall, such as appellant's fall on September 1, 2011, can cause further injury to or exacerbate or aggravate already injured spinal discs. "These injuries also contribute to degenerative changes along the bony aspects of the spine."

Dr. Pathi noted that appellant's cervical spine was more directly impacted when she fell, which led to muscle imbalances and stress surrounding her spine and shoulders. As a direct result of the fall, when appellant now looks up or down, twists at the trunk, attempts to lift heavy objects overhead and in front of her body, the extension of looking upwards with the cervical spine closed the bony opening for the nerves to exit the spine, causing and exacerbating her symptoms of the cervical disorder radiating upper extremity pain, numbness and weakness.

Appellant's lumbar spine was also affected by the fall. Dr. Pathi noted that the April 26, 2013 MRI scan revealed multiple disc bulges at all levels with moderate bulges from L3-5 and moderate-to-severe loss of disc height with diffuse disc bulge at L5-S1. Appellant's symptoms only increased after her fall on September 1, 2011, and as a direct result, she now has difficulty with prolonged sitting or walking, radiating pain and numbness to both lower extremities down to her feet, as well as pain with any bending or lifting. The constant numbness to both feet made it difficult to feel the ground beneath her, which increased the difficulty of ambulation. Dr. Pathi continued:

> "The physiological mechanism of [appellant's] falling on September 1, 2011, while in the performance of her duties as a [c]linical [p]sychologist with the Federal Bureau of Prisons, accelerated or speeded the expected progression of her preexisting conditions of cervical stenosis and narrowing of the right-sided neural foramina at C5-C6 and C6-C7, cervical radiculopathy, cervical disc herniation, facet joint degeneration arthritis involving the left C3-C4 facet, lumbar disc disorder, degenerative changes of the right knee represented by chondral loss and marginal osteophyte formation along the lateral patellofemoral joints, and acute scapulothoracic strain. [These conditions] are progressive in nature [and] in her present debilitating condition would not have manifested itself but for her employment. Based on my 39 years of experience as a Board[-]Certified Orthopedic Surgeon, my long-term medical treatment and first-hand observation, my review of the relevant medical records and my interpretations of the relevant diagnostic testing, it is my opinion that there is no other reasonable medical explanation in regards to her present debilitating condition but that [appellant's] permanent aggravation to the aforementioned preexisting conditions were unequivocally precipitated, accelerated and proximately caused by the September 1, 2011 work injury."

In a decision dated January 27, 2014, an OWCP hearing representative affirmed the August 21, 2013 decision as modified to accept appellant's claim for permanent aggravation of cervical spondylosis and right C5-6 paresthesias as found by Dr. Bald. The hearing representative found that the medical evidence did not establish the element of causal relation for the other claimed conditions and that OWCP gave appropriate weight to Dr. Bald's opinion. The hearing representative explained that the opinions of other physicians were not well rationalized. In particular, Dr. Pathi's opinion that the fall could have aggravated a preexisting spinal disc condition was speculative. He did not address the history of appellant's cervical spine condition from 2004 or her 2009 nonoccupational injury. Further, Dr. Pathi did not make a clear distinction between preexisting cervical and lumbar condition and her condition following the September 1, 2011 work injury.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[6] An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim, including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[7]

Causal relationship is a medical issue,[8] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,[9] must be one of reasonable medical certainty,[10] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[11]

ANALYSIS

On December 7, 2011 OWCP accepted appellant's claim for right knee sprain and strain and lumbar sprain and strain. The first mention of an accepted neck sprain appears in the April 8, 2013 statement of accepted facts provided to Dr. Bald, the second opinion orthopedic surgeon. Following his reports, and the August 19, 2013 report of Dr. Pathi, the attending orthopedic surgeon, OWCP accepted a tear of the right medial meniscus and a neck sprain. Thereafter, the hearing representative accepted a permanent aggravation of preexisting cervical spondylosis with right C5-6 paresthesias, as Dr. Bald had recommended.

[6] 5 U.S.C. § 8102(a).

[7] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[8] *Mary J. Briggs*, 37 ECAB 578 (1986).

[9] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[10] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[11] *See William E. Enright*, 31 ECAB 426, 430 (1980).

OWCP denied any further expansion of appellant's claim on the grounds that the medical opinion evidence is not well rationalized. On September 15, 2011 Dr. Pathi stated that, based on appellant's statements, his clinical examination, and his experience as a Board-certified orthopedic surgeon, appellant's current injury to the right knee was the direct result of the work injury. It was a conclusion he would repeat, without elaboration, in follow-up reports. On April 4, 2012 Dr. Pathi stated that, based on the description given by appellant, the physical examination, and his training and experience as a Board-certified orthopedic surgeon, appellant's injury to the neck, otherwise unspecified, was the direct result of the work injury that occurred on September 1, 2011. Again, he did not adequately explain what it was about appellant's description or his findings and experience that brought him to that conclusion.

Dr. Brudenell, another orthopedic surgeon, diagnosed cervical radiculopathy, slowly resolving, and cervical spondylosis, the latter of which, he commented, predated appellant's injury but "certainly her cervical radiculopathy seems to be directly related to her injury." Like Dr. Pathi, he did not explain the reason this seemed to be the case. The Board has held that medical conclusions unsupported by rationale are of diminished probative value.[12]

Dr. Buenviaje-Smith, a consulting pain specialist, advised that she did not have copies of any previous MRI scans of the lumbar spine to determine if there was any progression of the pathology. Nonetheless, she stated that the mechanism of the fall injury may have aggravated appellant's preexisting condition. That is possible, of course, but conjecture is not sufficient to discharge appellant's burden to establish the element of causal relationship. Although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal.[13]

Dr. Pathi noted on April 3, 2013 that appellant had preexisting cervical and lumbar spine conditions and preexisting degenerative changes to her right knee, but she was asymptomatic prior to the September 1, 2011 work injury. The Board has held, however, that when a physician concludes that a condition is causally related to employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.[14] The mere fact that a condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship between the two.[15] Dr. Pathi did not explain how appellant's fall and twist injury had permanently aggravated any preexisting medical condition.

On November 26, 2013 Dr. Pathi provided some medical rationale to support his opinion. He explained that vertebral discs act as load-bearing cushions to help distribute compressive forces

[12] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[13] *Philip J. Deroo*, 39 ECAB 1294 (1988); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

[14] *Thomas D. Petrylak*, 39 ECAB 276 (1987).

[15] *Steven R. Piper*, 39 ECAB 312 (1987).

to the spine, and any traumatic fall, such as appellant's high-impact fall, can further injure already injured discs. He added that such injuries contribute to degenerative changes along the bony aspects of the spine, and in appellant's case had contributed to muscle imbalances and stress surrounding her spine and shoulders and an increase in lumbar symptomatology after the September 1, 2011 work injury.

Dr. Pathi's opinion that the work incident accelerated or speeded the expected progression of appellant's preexisting conditions appears to lack any objective basis in the medical record. He did not adequately explain how any preexisting condition had progressed beyond what might be expected from the natural progression of that condition. Dr. Buenviaje-Smith advised that she did not have copies of any previous MRI scans of the lumbar spine to determine if there was any progression of the pathology. The Board notes that x-rays of the cervical spine, obtained on August 24, 2012, showed marked spondylosis involving C5-6 and C6-7 with marked narrowing of C5-6 and C6-7 right-sided neural foramina. The study indicated, however, that the severity of this narrowing had only mildly worsened since September 2, 2004. If there was anything in this study that supported Dr. Pathi's opinion that the September 1, 2011 work injury was likely responsible for the mild worsening, as opposed to the natural progression of the preexisting condition over an eight-year period, he did not explain.

OWCP asked Dr. Bald to provide a rationalized opinion that differentiated appellant's preexisting condition from the effects of the work injury. Dr. Pathi failed to explain how the incident could have accelerated or speeded the expected progression of appellant's preexisting conditions. Without such evidence, Dr. Pathi's description of the physiological mechanism of the fall and its effect on appellant's spine remains speculative.

Accordingly, the Board finds that Dr. Pathi's opinion on causal relationship is of diminished probative value and is insufficient to establish the element of causal relationship. Dr. Pathi has offered a physiological explanation of how a traumatic fall can further injure intervertebral discs that are already injured, but he has not shown how the medical record supports his hypothesis that the September 1, 2011 work injury accelerated or speeded the expected progression of any preexisting condition. Because his opinion is of diminished probative value, the Board also finds no conflict warranting referral to an impartial medical specialist under 5 U.S.C. § 8123(a). The Board will therefore affirm OWCP's January 27, 2014 decision.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden to establish that the conditions for which appellant seeks compensation are causally related to the September 1, 2011 work injury.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 24, 2014
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board